IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 30826 of 2007(T)

PETITIONER:

YAMUNA TOURIST HOME, ADOOR REPRESENTED BY V.M. VILASINI, MANAGING PARTNER.

BY ADV. SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN

RESPONDENTS:
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1. COMMERCIAL TAX OFFICER, ADOOR, PATHANAMTHITTA DISTRICT.

2. THE DEPUTY COMMISSIONER (APPEALS) COMMERCIAL TAXES, KOLLAM.

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) NO. 30826 OF 2007 T

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Dated this the 17th day of October, 2007

J U D G M E N T

The challenge in this writ petition is against Ext.P7 order passed by the appellate authority granting stay of realisation of the penalty imposed on the petitioner on condition that he remits 50% of the amount. The background facts are that Ext.P1 is an order of assessment against which the petitioner filed an appeal to the 2nd respondent. Ext.P2 order of stay was passed on 27/6/07 requiring the petitioner to remit an amount of Rs.2,00,000/- (Rupees two lakhs) which has been remitted by the petitioner since then.

2. In the meanwhile, even before the petitioner could not file an appeal or obtain the interim order in the appeal, penalty proceedings were initiated and that resulted in Ext.P5 order imposing the penalty of Rs.5,18,012/-. It is against that order that Ext.P6 appeal was filed, in which, by the impugned order stay was granted on condition that the petitioner remits 50%

thereof.

3. In view of the fact that the penalty has been imposed as a consequence of Ext.P1, though proceedings were initiated, that resulted in Ext.P5, the outcome of the appeal on Ext.P1 will have effect on the outcome of Ext.P6 appeal against the penalty.

4. In view of this, I am not in a position to sustain Ext.P7 order as such imposing a condition of of 50%. Therefore, in modification of the condition imposed on Ext.P7, I direct that there will be interim stay of Ext.P5, on the petitioner remitting 25% of the penalty amount and furnishing security for the balance amount to the satisfaction of the Assessing Authority.

Subject to the above modification of Ext.P7, writ petition is disposed of.

ANTONY DOMINIC, JUDGE.

Rp